

APPEAL NO. 033077
FILED JANUARY 6, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 9, 2003. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the fifth quarter. The claimant appeals this determination. The respondent (carrier) urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

Section 408.142 provides that an employee continues to be entitled to SIBs after the first compensable quarter if the employee: (1) has not returned to work or has earned less than 80% of the employee's average weekly wage as a direct result of the impairment; and (2) has in good faith sought employment commensurate with his or her ability to work. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(1) (Rule 130.102(d)(1)) provides that a good faith effort has been made if the employee "has returned to work in a position which is relatively equal to the injured employee's ability to work." At issue in this case is whether the claimant satisfied the good faith requirement for SIBs entitlement through her efforts to create her own business acquiring rental properties. A carrier is not expected to subsidize a business venture and it cannot be used as a subterfuge for a good faith effort to obtain employment. Texas Workers' Compensation Commission Appeal No. 980548, decided May 1, 1998. Whether a good faith effort is shown is basically a question of fact for the hearing officer and cases tend to become very fact-specific in self-employment situations. Texas Workers' Compensation Commission Appeal No. 982820, decided January 11, 1999. The hearing officer was not persuaded from the evidence that the claimant met the requirements for SIBs through her self-employment efforts. Nothing in our review of the record reveals that the hearing officer's decision is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Chris Cowan
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Edward Vilano
Appeals Judge